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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

UNITED STEELWORKERS OF AMERICA, AFL-CIO
Petitioner

v.

R. H. BOULDIN, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONER

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UNITED STEELWORKERS OF AMERICA, AFL-CIO
Petitioner

v.

R. H. BOULIGNY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the United States District Court for the Western District of North Carolina (R. 7) is unreported. The opinion of the United States Court of Appeals for the Fourth Circuit (R. 12) is reported at 336 F. 2d 160.

JURISDICTION

The judgment of the Court of Appeals (R. 20) was entered on August 6, 1964. The petition for certiorari was filed in this Court on November 4, 1964, and granted on January 18, 1965 (R. 21). This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the modern-day labor union—treated as a legal entity for virtually every other purpose—is to be treated as a legal entity with its own citizenship for purposes of the diversity jurisdiction of the federal courts?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2 of the Constitution of the United States provides, in pertinent part:

> "The judicial Power shall extend . . . to Controversies between . . . Citizens of different States . . ."

28 U.S.C. § 1332 provides, in pertinent part:

> "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—
>
> "(1) citizens of different states;"

28 U.S.C. § 1441(a) provides:

> "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

STATEMENT OF THE CASE

On May 29, 1963, Respondent, R. H. Bouligny, Inc. ("the Company"), sued Petitioner, United Steelworkers of America ("the Union"), an unincorporated labor union, in the Superior Court of Mecklenburg County, North Carolina, alleging that it had been libelled in a leaflet published

by the Union. The complaint prayed for $100,000 compensatory damages and an additional $100,000 punitive damages (R. 1-3).

On June 18, 1963, the Union removed the case to the United States District Court for the Western District of North Carolina, pursuant to 28 U.S.C. § 1441(a). The removal petition recited that the Company is a North Carolina citizen (being incorporated and having its principal place of business in that State), that the Union is a Pennsylvania citizen (having its principal place of business in that State), and that accordingly the District Court had jurisdiction on the basis of diversity of citizenship between the parties (R. 4-5).

The Company moved to remand. It did not dispute that the Union's principal place of business is in Pennsylvania. It asserted, however, that the Union "is an unincorporated association and has members who are citizens of North Carolina," and that consequently "there is no diversity of citizenship" (R. 6).

The District Court's Opinion

The district court refused to remand. It found that the Union has members who are citizens of North Carolina, but "that the defendant union is a juridical person as fully and completely as if it were organized as a corporation, having as great unity of action and as much power centered in the governing officers, and that its principal office and place of business is in Pittsburgh, Pennsylvania" (R. 7).

The court chose to follow what is described as a "trend to treat unincorporated associations in the same manner as corporations and to treat them as citizens of the state wherein the principal office is located for jurisdictional purposes." It stated that "there appears to be no common sense reason for treating an unincorporated labor union differently from a corporation." While acknowledging that "the greater

number of cases still hold" that diversity is lacking if a labor union has a member whose citizenship is not diverse from that of the other party, the court described those cases as "poorer reasoned" than the trend which it was following (R. 7).

The Court of Appeals' Opinion

The Company obtained interlocutory review pursuant to 28 U.S.C. § 1292(b) (R. 11). The Court of Appeals reversed. It recited, and did not disturb, the district court's finding that the Union is "a juridical person as fully and completely as if it were organized as a corporation . . . and that its principal office and place of business is in Pittsburgh, Pennsylvania" (R. 13). It concluded, however, that no matter how complete an unincorporated association's legal personality, the citizenship of each of its members is controlling for diversity purposes.

This result, the court said, was dictated by the Supreme Court's opinions in *Chapman* v. *Barney*, 129 U.S. 677 (1889) and *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U.S. 449 (1900) stating that the rule attributing citizenship to corporations "must not be extended" to any other type of collective association (R. 14-15).

The Union argued below that the rigid rule of these early cases had been modified by the subsequent decision in *Puerto Rico* v. *Russell & Co.*, 288 U.S. 476 (1933), holding an unincorporated *Sociedad en Comandita* to have a citizenship distinct from that of its members for purposes of federal jurisdiction. The court below held, however, that *Russell* "furnishes no support whatsoever for such a position," because *Russell* interpreted the word "citizen" as it appears in the Organic Act, now 48 U.S.C. §§ 863, 864, and not as it appears in the diversity statute. The court found nothing in *Russell* to indicate that this Court "was consciously expanding federal diversity jurisdiction" (R. 15-17). The court acknowledged, however, that its reading of

Russell is in conflict with that of three other circuits (R. 17 and n. 3).

The court next stated that, "whatever basis there once was for the belief that *Russell* intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute" assigning dual citizenship to corporations. This resulted, the court said, for two reasons: first, since Congress had now specifically defined the citizenship of one type of artificial body—the corporation—the courts should no longer undertake to define the citizenship of other types; and second, labor unions "would be treated more favorably than corporations for diversity purposes" if they were assigned a single citizenship, for corporations now have two (R. 18).

The court noted that there is "informed sentiment" supporting the treatment of unincorporated associations such as labor unions as citizens of the State where their principal place of business is located (R. 19). Indeed, it "readily concede[d] that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes. But the question of policy is certainly not one for decision of an intermediate appellate court" (R. 19, n. 4).

SUMMARY OF ARGUMENT

The question presented in this case is whether a labor union which is a "juridical person as fully and completely as if it were organized as a corporation" (R. 7, 13) is, like a corporation, to be treated for diversity purposes as having a citizenship distinct from its members.

The court below has held that a labor union, unlike a corporation, may not remove an action to federal court on the ground of diversity of citizenship if it has a single member who is a citizen of the same state as the opposing party. Since most unions, like the petitioner, have at least a few

members in each of the fifty states, the decision below effectively bars them from ever removing cases to federal court on diversity grounds. We believe this decision undermines the purpose of the diversity jurisdiction and is inconsistent with prior decisions of this Court.

I.

The purpose of the diversity jurisdiction is to prevent local prejudice against an outsider forced to litigate in the domicile of his adversary. As Alexander Hamilton explained in Federalist No. 80, the federal courts are "the proper tribunals for the determination of controversies between different states and their citizens," for in such cases "the state tribunals cannot be supposed to be impartial." The Judicial Conference recently found that "there is a great bulk of expert opinion from those who litigate in the courts that local prejudice continues to exist, and that the federal courts are in truth a strong protection against it."

There can be no doubt that labor unions today encounter severe regional hostility when they seek to organize in certain parts of the country. Outside of the heavily industrialized states, labor unions are regarded as "foreigners." Appeals to regional prejudice are a popular device for opposing their organizing attempts (see, e.g., the materials contained in the Appendix hereto), and state courts have in fact permitted abuses of judicial processes as a result of that prejudice.

To characterize a union as a "citizen" of an unfriendly state, simply because it has a few members there, is to indulge the cruelest of fictions. For a local jury can be expected to realize that the astronomical judgment it is invited to render against the union (frequently including substantial punitive damages) will be paid not by the union's handful of local members, but from its general treasury. This temptation to assist a local citizen at the expense of the distant treasury of an unpopular defendant constitutes the very local preju-

dice which the removal procedure is designed to mitigate or prevent.

The considerations are not, of course, one-sided. A foreign plaintiff who must sue a union in the union's habitat will be equally anxious to secure the protections of the federal courts. Some of the courts of appeals, responsive to the plaintiff's plight, have permitted him to sue the union as a "class," and to name as representatives of the class only individuals whose citizenship is diverse from his own. These courts have heralded this device as an appropriate means to prevent labor unions from enjoying "virtual immunity from suit in federal courts," and as necessary "to prevent a failure of justice." But these decisions serve to render the decision below all the more unjust. For the effect is to give the plaintiff absolute power to determine the forum in which his case will be heard. If he prefers the federal forum, he will sue the union as a "class." If, on the other hand, he prefers the State forum, he will sue the union as an entity, and, under the decision of the court below, the union will be powerless to remove. Surely this inequity is a far greater "failure of justice."

The court below recognized that it would be desirable to treat a labor union as a citizen of its principal place of business. It thought, however, that it was precluded from doing so by certain decisions of this Court rendered at the turn of the century. The court below failed to recognize that a more recent decision of this Court provides the governing standard for determining the citizenship of unincorporated associations. Under that standard, labor unions are entitled to treatment as citizens for diversity purposes, distinct from the citizenships of their members.

II.

In 1933, this Court set forth the standards governing the citizenship of unincorporated associations for purposes of federal jurisdiction. *Puerto Rico* v. *Russell & Co.*, 288

U. S. 476. If an association is endowed with a "complete legal personality" (288 U. S. at 479) and is "consistently regarded as a juridical person" (*Id.* at 481), there is "no adequate reason for holding that [it] has a different status for federal jurisdiction than a corporation. (*Id.* at 482). The Court distinguished its earlier decisions denying citizenship to certain associations (on which the court below relied) on the ground that the associations involved in those cases had lacked many of the attributes of legal personality, and "what was but an association of individuals for so many ends and a juridical entity for only a few, was not easily to be treated as if it were a single citizen" (*Id.* at 480).

The court below, apparently acknowledging that the modern labor union has a complete legal personality, nonetheless refused to follow *Russell* for two reasons. Neither is tenable.

First, the Court below dismissed *Russell* as irrelevant, because it involved the determination of federal jurisdiction under the Organic Act of Puerto Rico, not the diversity statute. It found nothing in the *Russell* opinion to indicate that this Court "was consciously expanding federal diversity jurisdiction." This analysis will not survive a reading of the *Russell* opinion. For this Court treated the questions under the Organic Act and the diversity statute as indistinguishable, and indeed couched its entire opinion as an analysis of the diversity precedents. And in a subsequent opinion, this Court characterized *Russell* as involving "diversity of citizenship on which jurisdiction of the federal courts depended." *Puerto Rico* v. *Russell & Co.*, 315 U. S. 610, 614 (1942).

The second basis suggested by the court below for not following *Russell* was that "whatever basis there once was for the belief that *Russell* intended to lay down new principles for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute." This amendment declared that corporations shall be deemed

citizens of both the state of their incorporation and the state of their principal place of business. It was enacted to cure the anomaly that corporations could obtain diversity jurisdiction in their home state by virtue of foreign incorporation. Neither the *Russell* decision, nor the status of unincorporated associations generally, was considered by Congress, and accordingly there is absolutely no basis for concluding that Congress "reversed" *Russell* by adopting the 1958 amendments.

III.

The modern-day labor union clearly has a "complete legal personality" entitling it to treatment as a citizen under the *Russell* test. "[I]n every way the union acts as a business entity, distinct from its members. No organized corporation has greater unity of action, and in none is more power centered in the governing executive bodies." *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 385-86 (1922). "Responsive to the actualities of our industrial society, in which unions as such play the role that they do, the law regards a union as a self-contained, legal personality exercising rights and subject to responsibilities wholly distinct from its individual members." *International Association of Machinists* v. *Street*, 367 U. S. 740, 808 (1961) (dissenting opinion of Mr. Justice Frankfurter).

Whatever conceivable doubt there might previously have been as to the completeness of the labor union's legal personality surely was removed with the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. §§ 401 et. seq. By that Act, Congress filled out the labor union's legal personality so that it is virtually indistinguishable from the corporation's in every respect.

The characteristics of the modern-day labor union are "much more impressive" than those of the association involved in *Russell* "to compel recognition of unincorporated unions as juridical persons equivalent to corporations for

purposes of citizenship in cases in which jurisdiction is founded upon diversity of citizenship." *American Federation of Musicians* v. *Stein*, 213 F. 2d 679, 687 (6th Cir.), *cert. denied* 348 U. S. 873 (1954). Indeed, the district court in the present case found (and the Court of Appeals did not disturb its finding) that the union "is a juridical person as fully and completely as if it were organized as a corporation" (R. 7, 13).

IV.

The question remains, of what state is a labor union a citizen? Since the purpose of diversity jurisdiction is to avoid local prejudice, a labor union should be deemed a citizen of the State of its principal place of business, for that is where it is least likely to suffer such prejudice. No matter what factors are taken into account in determining "principal place of business," it is clear that the union involved in this case is a citizen of Pennsylvania.

ARGUMENT

> "For almost a century, in ascertaining whether there is the requisite diversity of citizenship to confer jurisdiction on the federal courts, we have looked to the domicil of a corporation, not that of its individual stockholders, as controlling." *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, 479 (1933).

The question presented in this case is whether a labor union which is a "juridical person as fully and completely as if it were organized as a corporation" (R. 7, 13) is, like a corporation, to be treated for diversity purposes as having a citizenship distinct from its members'.

The court below has held that a labor union, unlike a corporation, may not remove an action to federal court on the ground of diversity of citizenship if it has a single member

who is a citizen of the same state as the opposing party. Since most unions, like petitioner, have at least a few members in each of the fifty states, the decision below effectively bars them from ever removing cases to federal court on diversity grounds. We believe this decision undermines the purpose of the diversity jurisdiction and is inconsistent with prior decisions of this Court.

I. TO DENY LABOR UNIONS ACCESS TO THE FEDERAL COURTS ON DIVERSITY GROUNDS—AS THE DECISION BELOW DOES—WOULD UNDERMINE THE PURPOSE FOR WHICH THE DIVERSITY JURISDICTION WAS CREATED.

The decision below, by effectively denying labor unions access to the federal courts on diversity grounds, undermines the very purpose for which the diversity jurisdiction was created—avoidance of local prejudice. As Alexander Hamilton explained in Federalist No. 80, the federal courts are "the proper tribunals for the determination of controversies between different states and their citizens," for in such cases "the state tribunals cannot be supposed to be impartial."[1] Fear of local prejudice survives today as the principal justification for preservation of the diversity jurisdiction. Thus, in 1951, the Committee on Jurisdiction and Venue of the Judicial Conference, opposing suggestions that diversity jurisdiction be abolished, explained:

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[1] See, to the same effect, *Martin* v. *Hunter's Lessee*, 14 U. S. (1 Wheat.) 304, 347 (1816):

> "The constitution has presumed (whether rightly or wrongly, we do not inquire) that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, or be supposed to obstruct or control, the regular administration of justice. Hence, in controversies . . . between citizens of different states . . . it enables the parties, under the authority of Congress, to have the controversies heard, tried, and determined before the national tribunals."

See also, *Dodge* v. *Woolsey*, 59 U. S. (18 How.) 331, 354 (1856).

> "The question involved is not a theoretical one, but one of great practical significance. To deny the right to resort to the Federal courts means that in controversies between citizens of different states, one must seek justice in the courts of the State of his adversary where he will find, in many of the States, that trial by jury has been stripped of many of its safeguards and the judge has been denied the common-law powers necessary to the proper administration of justice. . . . To require a nonresident to try his case in such a tribunal is not only to turn him over to the tender mercies of a local jury, without power in the presiding judge to counteract the appeals to prejudice of local counsel, it is also to deny to him the sort of trial by jury which as a citizen of the United States he is entitled to have in the Federal courts . . .
>
> ". . . [T]here is a great bulk of expert opinion from those who litigate in the courts that local prejudice continues to exist, and that the Federal courts are in truth a strong protection against it."[2]

There have been suggestions by some commentators—though rejected by Congress and the Judicial Conference—that corporations no longer suffer local prejudice. But surely no similar claim can be made about labor unions. The labor movement, from its birth, has been predominantly a regional development. Its strength, its support, and its acceptance have come mainly from the heavily industrial states. Elsewhere, labor unions are still regarded as "foreigners." They have been required, by the extensive relocation of businesses to previously rural parts of the country during the past two decades, to venture into these areas in attempts to organize employees, and they have encountered

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[2] Attached to S. Rep. No. 1830, 85th Cong. 2d Sess. (1958), and printed in 1958 U. S. Code Congressional and Administrative News, 3114 at 3116-17.

widespread community hostility. We have assembled in the Appendix to this brief a few leaflets and newspaper editorials typifying the kinds of appeals to regional prejudice which labor unions encounter. Another representative situation was described by the NLRB in *Utica-Herbrand Tool Div.*, 145 NLRB 1717 (1964). A union's organizing attempt was opposed not only by the employer, but by the mayor, policemen, state legislators, the newspaper, the radio station and citizens' committees. The union representatives were called "outside agitators." Employees were warned that unions had made "distress areas" of other parts of the country, and that other companies would relocate in the area only "if we keep the climate right." Small wonder that labor unions fear local prejudice in such areas and seek to remove their lawsuits to the federal courts![3]

Fortunately, most activities of labor unions are regulated by federal law, and thus do not give rise to litigation necessitating removal on diversity grounds.[4] However, the few cases which can arise exclusively under state law—allega-

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[3] For a demonstration of how regional prejudice in such areas can affect the quality of justice received by labor unions in state courts, see *State Court Injunctions*, Report of the Subcommittee on Labor and Public Welfare, S. Doc. No. 7, 82d Cong., 1st Sess. (mislabeled 81st Cong. 2d Sess.) 6-12, 92-118 (1951) (finding a prevalence in the southeast of "abuse of injunctions" against labor unions). This report is summarized and discussed in Comment, *Unions as Juridical Persons*, 66 Yale L.J. 712, 745 and n. 191 (1959). See also Petition for Certiorari in *Walker* v. *North Carolina*, October Term, 1960, No. 110 (certiorari denied, 364 U. S. 832).

[4] Contract actions presumably are removable on "federal question" grounds by virtue of Section 301 of the Labor Management Relations Act, 29 U.S.C. §185; most suits involving internal union affairs are now brought under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 *et seq.*; and most "non-violent" torts are preempted to the exclusive jurisdiction of the National Labor Relations Board (see, e.g., *Garner* v. *Teamsters Union*, 346 U. S. 485 (1953); *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236 (1959); *Local No. 207* v. *Perko*, 373 U. S. 701 (1963)).

tions of violence or defamation[5]—are those presenting the most inflammatory issues, and which are most likely to excite regional hostilities. Suits of this type most frequently arise —as in this case—when a union attempts to organize in a generally unorganized section of the country. Community emotions will have been raised to fever pitch. The complaint will ask huge sums in actual damages, together with enormous punitive damages. The union, far from home and virtually friendless, will, in the words of the Judicial Conference, be "turn[ed] . . . over to the tender mercies of a local jury, without power in the presiding judge to counteract the appeals to prejudice of local counsel."

To characterize the union in these circumstances as a "citizen" of the forum state, simply because it has a few members there, is to indulge the cruelest of fictions. Here, for example, respondent, a prominent local corporation, has sued the petitioner union for $100,000 actual and $100,000 punitive damages. It can be anticipated that a local jury will realize that any verdict it renders will be paid not by the union's handful of local members, but from its general treasury in Pittsburgh. This temptation to assist a local citizen at the expense of the distant treasury of an unpopular defendant constitutes the very local prejudice which the removal procedure is designed to mitigate or prevent.[6]

Petitioner's plight in this case is one which is recurring with increasing frequency. The "six-figure" damage suit

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[5] There is a conflict among the lower courts as to whether defamation actions are, in some circumstances, preempted. *Compare Meyer* v. *Joint Council 53, Teamsters,* — Pa. —, 58 LRRM 2183 (1965) (not preempted) *with Linn* v. *United Plant Guard Workers,* 337 F. 2d 68 (6th Cir. 1964) (preempted). Indeed, once the jurisdictional question in the instant action is resolved, petitioner will file its responsive pleading, introducing facts which, it will allege, demonstrate that this action is preempted.

[6] For a representative example of the tendency of unfriendly juries to award punitive damages against labor unions, see *United Automobile Workers* v. *Russell,* 356 U. S. 634, 652 n. 10, 657-58 (1958) (dissenting opinion of Chief Justice Warren).

has become a popular weapon to scare off union organizing attempts in unorganized areas. There are at least seven other libel suits against labor unions, each seeking astronomical damages, now pending on removal in the district courts of the Fourth Circuit alone. In each, the union removed the case to federal court on the ground of diversity of citizenship, and in each a motion to remand is being held in abeyance pending final disposition of the present case.[7]

The considerations involved are not, of course, one-sided. Just as there are some areas of the country in which union defendants fearful of local prejudice wish to remove their cases to the federal courts, so there are other areas in which plaintiffs, fearful of local prejudice, would like to sue unions in the federal courts on diversity grounds.[8] Reversal of the

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[7] The following table lists the other seven pending cases, and the damages sought in each:

Case and Docket No.	*Jurisdiction*	*Damages Sought*
White v. United Steelworkers of America, Civ. Ac. No. 1798	W.D. N.C.	$200,000
Braxton v. Int'l Ladies Garment Workers Union, Civ. Ac. Nos. 596-97	E.D. N.C.	$1,000,000
Haddock v. Int'l Ladies Garment Workers Union, Civ. Ac. No. 598	E.D. N.C.	$1,000,000
Horne v. Int'l Ladies Garment Workers Union, Civ. Ac. No. 599	E.D. N.C.	$1,000,000
Kindred v. Upholsterers' Int'l Union, et al., Civ. Ac. No. 64-C-45R	W.D. Va.	$125,000
Rowe Furniture Corp. v. Upholsterers' Int'l Union, et al., Civ. Ac. No. 64-C-46R	W.D. Va.	$300,000
Tingler v. Upholsterers Int'l Union, et al., Civ. Ac. No. 64-C-47R	W.D. Va.	$75,000

[8] For example, in the single district within the Fourth Circuit which sits in a heavily industrialized area, a libel action against a labor union was instituted recently in federal court by the *plaintiff*, alleging diversity of citizenship. The action was dismissed for lack of jurisdiction on October 21, 1964, on the basis of the Fourth Circuit's decision in the instant case. *Gray* v. *International Typographical Union*, Civ. Ac. No. 15676 (D. Md.).

decision below would of course facilitate avoidance of local prejudice in both these situations.

Anomalously, the court below has held that a plaintiff who wants to bring a labor union into federal court on diversity grounds can do so, simply by suing the union as a "class" rather than as an entity, and naming as representatives of the class only individuals whose citizenship is diverse from the plaintiff's. *Tunstall* v. *Bhd. of Locomotive Firemen,* 148 F. 2d 403 (4th Cir. 1945). This device has been widely heralded as a means to prevent labor unions from enjoying "virtual immunity from suit in federal courts." *Calagaz* v. *Calhoun,* 309 F. 2d 248, 252 (5th Cir. 1962). See also *Montgomery Ward & Co.* v. *Langer,* 168 F. 2d 182 (8th Cir. 1948). Cf. *Underwood* v. *Maloney,* 256 F. 2d 334 (3rd Cir. 1958).

But this expansion of diversity jurisdiction to permit *plaintiffs* to bring labor unions into federal court, though desirable in itself, renders the present decision of the court below all the more unfair. For it gives the plaintiff unprecedented power to determine the forum in which the case will be tried. If he wants to be in federal court, he will utilize the "class action" device to create diversity jurisdiction. If, on the other hand, he prefers to be in the state court, he need only sue the union there as an entity, and, under the decision of the court below, the union will be powerless to remove.

It has been said that the development permitting plaintiffs to sue unions in federal court on diversity grounds was necessary "to prevent a failure of justice." *Calagaz, supra,* at p. 252. But surely equity dictates that the labor union have access to the federal courts equally with its adversaries in litigation. The decision of the court below, denying that equal access, countenances a far greater "failure of justice."

The court below recognized that there is "informed sentiment" supporting the treatment of unincorporated associa-

tions such as labor unions as citizens of the State where the principal place of business is located. (R. 19). Indeed, it "readily concede[d] that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes." (R. 19, n. 4). It reasoned, however, that "the question of policy is certainly not one for decision of an intermediate appellate court." (*Ibid*).

We shall show, in the remainder of this brief, that treatment of labor unions for diversity purposes as citizens of the state of their principal place of business is warranted, indeed dictated, by prior decisions of this Court.

II. AN UNINCORPORATED ASSOCIATION POSSESSING A COMPLETE LEGAL PERSONALITY HAS A CITIZENSHIP FOR DIVERSITY PURPOSES DISTINCT FROM THE CITIZENSHIPS OF ITS MEMBERS.

Article III, Section 2 of the Constitution extends the federal judicial power to "controversies . . . between Citizens of different States." Congress, beginning with the first Judiciary Act in 1789, has consistently extended jurisdiction over this class of cases to the lower federal courts.

During these nearly two centuries, the Supreme Court has recurrently been called upon to define the treatment of "collective" entities for diversity purposes. Its response, as we shall briefly sketch it at pp. 18-22, *infra*, has not been constant. In the early days, the Court refused to acknowledge that any artificial entity—even a corporation—could have a citizenship distinct from that of the natural persons who created and ran it. By the 1840's, the realities of the Industrial Revolution forced the Court to treat corporations as citizens, but a steadfast refusal to extend that treatment to any unincorporated associations persisted through the early 1900's. It was not until 1933, in *Puerto Rico* v. *Russell & Co.* 288 U. S. 476 (1933), that the Court substituted analysis for labels, and articulated a meaningful doctrine

governing the citizenship of unincorporated associations: if such an association has a "complete legal personality," like a corporation's, "we see no adequate reason for holding that [it] has a different status for purposes of federal jurisdiction than a corporation" (288 U. S. at 482).

It is our thesis that *Russell* controls the decision in this case. Since the modern day labor union has a "complete legal personality" (as we show in Part III, herein) it has a citizenship distinct from its members' for diversity purposes.

The *Russell* opinion was not written on a clean slate. It discussed and harmonized a century and a half of prior decisions involving the treatment of collective organizations under the diversity grant. Accordingly, it is helpful to an understanding of the *Russell* opinion to first trace briefly that history.

A. The Treatment of Collective Associations Under the Diversity Grant Prior to *Puerto Rico* v. *Russell*.

This Court was first asked to determine whether a collective organization could have a citizenship distinct from its members in 1809, in *Bank of the United States* v. *Deveaux*, 9 U. S. (5 Cranch) 61. It held that a corporation could not be a citizen, and that, for diversity purposes, the courts must look to the citizenship of each of its shareholders:

> "That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen. . . ." (9 U. S. at 86).

While this decision did not, of course, survive, it was a predictable result for its times. Collective organizations—even corporations—had not yet assumed the importance which the Industrial Revolution would assign them. The common law had developed as a law of natural persons, and it was to be expected that the law would resist the at-

tribution of personal qualities to impersonal bodies. As this Court said, not so long ago, of the *Deveaux* opinion:

> "More than once [Chief Justice] Marshall had difficulty in transferring to corporations or other institutions legal conceptions and relations shaped in nomenclature and in fact from normative evolution in relation to persons of flesh and blood.
>
> "See, e.g., *Bank* v. *Deveaux,* 5 Cranch 61, where he was unable to adapt the concept of corporate 'inhabitancy,' applied in decisions he cited, for fitting the corporation into the constitutional scheme of diversity jurisdiction. His individualistic solution brought difficulties which lasted for decades." *United States* v. *Scophony Corp.,* 333 U. S. 795, 802-03, n. 10 (1948).

Deveaux was expressly overruled in 1844, in *Louisville, C. & C. R. R. Co.* v. *Letson,* 43 U. S. (2 How.) 495. The Court, explaining that the corporation engages in activities remote from the individuals who create and run it, concluded that it was a citizen of the chartering state.

This decision was so revolutionary in its attribution of personal qualities to impersonal bodies that it met with considerable disfavor from certain members of the Court. McGovney, *A Supreme Court Fiction,* 56 Harv. L. Rev. 853, 885-86. Accordingly, in 1853, the Court found a solution which at once satisfied the "naturalists" and the realists. It declared, in *Marshall* v. *The Baltimore & Ohio Railroad Co.,* 57 U. S. (16 How.) 314, that a corporation is not a citizen, thus satisfying the naturalists, but held that for diversity purposes each of its shareholders would be conclusively presumed to be a citizen of the chartering state. The result, of course, was exactly the same. And the Court made quite clear why that result was essential:

> "The necessities and conveniences of trade and business require that such numerous associates and stockholders should act by representation, and have the fac-

> ulty of contracting, suing and being sued in a fictitious or collective name. . . .
>
> "Nor is it reasonable that representatives of numerous unknown and ever-changing associates should be permitted to allege the different citizenship of one or more of these stockholders, in order to defeat the plaintiff's privilege [to sue in federal court]. It is true that these stockholders are corporators, and represented by this 'juridical person,' and come under the shadow of its name. But for all the purposes of acting, contracting, and judicial remedy, they can speak, act, and plead, only through their representatives or curators. . . .
>
> "The right of choosing an impartial tribunal is a privilege of no small practical importance, and more especially in cases where a distant plaintiff has to contend with the power and influence of great numbers and the combined wealth wielded by corporations in almost every state. It is of importance also to corporations themselves that they should enjoy the same privileges, in other states, where local prejudices or jealousies might injuriously affect them."

The corporation thus attained the status of a "citizen" for diversity purposes as the climax of an evolving body of law treating it as a juridical person for other purposes.

In three decisions around the turn of the century, the Supreme Court refused to extend "citizenship" to certain unincorporated associations. *Chapman* v. *Barney,* 129 U. S. 677 (1889) (joint stock association); *Great Southern Fire Proof Hotel Co.* v. *Jones,* 177 U. S. 449 (1900) (limited partnership); *Thomas* v. *Ohio State University Board of Trustees,* 195 U. S. 207 (1904) (college board of trustees). The opinions in these cases were notably devoid of any explanation as to *why* unincorporated associations should be treated differently than corporations. The fullest statement,

which appears in *Great Southern Fire Proof*, simply stated the proposition as an *ipse dixit*:

> "The rule that for purposes of jurisdiction and within the meaning of the clause of the Constitution extending the judicial powers of the United States to controversies between citizens of different states, a corporation was to be deemed a citizen of the state creating it, has been so long recognized and applied that it is not now to be questioned. No such rule, however, has been applied to partnership associations although such associations may have some of the characteristics of a corporation.
>
> * * *
>
> "That a limited partnership association created under the Pennsylvania statute may be described as a 'quasi corporation,' having some of the characteristics of a corporation, or as a 'new artificial person,' is not a sufficient reason for regarding it as a corporation within the jurisdictional rule heretofore adverted to. *That rule must not be extended. We are unwilling to extend it so as to embrace partnership associations.*" (177 U. S. at 456, 457; emphasis supplied.)

The Second Circuit has recently had occasion to note, and criticize, the lack of any explanation in these cases for the result reached. *Mason* v. *American Express Co.*, 334 F. 2d 392 (2d Cir. 1964). In its view, the Court made incorporation the *sine-qua-non* for citizenship "without making any effort to analyze the rationale of Marshall v. B. & O. R.R. in order to determine whether the reasons for extending citizenship to a corporation might apply with equal force to a joint stock association. This use of labels in place of a careful analysis was particularly ironic in view of the admonition in the Marshall opinion that 'it is not reasonable that those who deal with such persons [persons doing business through corporations] should be deprived of a val-

uable privilege by a syllogism, or rather sophism, which deals subtly with words and names, without regard to the things or persons they are used to represent.' 57 U. S. at 327-28." (334 F. 2d at 395-96). The Second Circuit concluded that the absence of any rationale for the doctrine making incorporation the test of citizenship "forewarned of an eventual abandonment of it by the Court which handed it down" (334 F. 2d at 395).

That abandonment came with this Court's decision in *Puerto Rico* v. *Russell,* 288 U. S. 476 (1933).

B. The Controlling Decision: *Puerto Rico* v. *Russell.*

In *Puerto Rico* v. *Russell & Co.,* 288 U. S. 476 (1933), this Court held that an unincorporated Puerto Rican "sociedad" had a unique citizenship, independent of that of its members, for purposes of federal jurisdiction. It reached this conclusion after an extended analysis of the Court's prior decisions, and the shaping of a doctrine to govern the citizenship of unincorporated associations.

At the outset, *Russell* made clear that the Supreme Court had accorded "citizenship" to corporations because of their "complete legal personality" and not because of any magic surrounding the act of incorporation:

> "For almost a century, in ascertaining whether there is the requisite diversity of citizenship to confer jurisdiction on the federal courts, we have looked to the domicil of a corporation, not that of its individual stockholders, as controlling. [Citing cases]. In its final form this rule of jurisdiction was stated in terms of a 'conclusive presumption' that the stockholders are citizens of the state of the corporate domicil [citing cases], *but even those who formulated the rule found its theoretical justification only in the complete legal personality with which corporations are endowed.* Fictitious that personality may be, in the sense that the fact that the corporation is composed of a plurality of individu-

> als, themselves legal persons, is disregarded, but it is a fiction created by law with intent that it should be acted on as if true. . . . *This treatment of the aggregate for other purposes as a person distinct from its members, with capacity to perform all legal acts, made it possible and convenient to treat it so for purposes of federal jurisdiction as well.*" (288 U. S. at 479-80; emphasis supplied)

Having thus enunciated the test of "citizenship"—the existence of a "complete legal personality"—the Court had to deal with its prior, *ipse dixit*, decisions involving unincorporated associations. This was done not by expressly overruling those cases, but by distinguishing them on the ground that the particular unincorporated associations there involved had had legal personalities "too incomplete" to warrant treatment as a "single citizen":

> "But status as a unit for purposes of suit alone, as in the case of a joint stock company, see Chapman v. Barney, 129 U. S. 677; Levering & G Co. v. Morrin, (C.C.A. 2d) 61 F. (2d) 115, 117, or a limited partnership, not shown to have the other attributes of a corporation, Great Southern Fire Proof Hotel Co. v. Jones, 117 U. S. 499; compare Thomas v. Ohio State University, 195 U. S. 207, has been deemed *a legal personality too incomplete; what was but an association of individuals for so many ends and a juridical entity for only a few, was not easily to be treated as if it were a single citizen.*" (288 U. S. at 480, emphasis supplied.)

The Court then listed the characteristics of the sociedad which constituted a "complete legal personality." These characteristics are of two types:

> (1) *The law permits the sociedad to act as an entity in the performance of its functions.* Specifically, it "is created by articles of association filed as public

records," and it "may contract, own property and transact business, sue and be sued in its own name and right" (288 U. S. at 481).

(2) *In internal matters, the law recognizes the sociedad as something more than, and distinct from, its individual members.* Specifically, it "endures . . . regardless of the death or withdrawal of individual members"; its members "are not primarily liable for its acts and debts"; it functions through managers in whom "powers of management" are vested; and its creditors are preferred with respect to its assets over those of its individual members (288 U. S. at 481).

Having listed these characteristics of the sociedad, the Court concluded:

> "These characteristics under the Codes of Puerto Rico give content to their declaration that the sociedad is a juridical person. That personality is so complete in contemplation of the law of Puerto Rico that we see no adequate reason for holding that the sociedad has a different status for purposes of federal jurisdiction than a corporation organized under the law." (288 U. S. at 482).

Thus *Russell* clearly establishes the test for determining when an unincorporated association has a unique citizenship for diversity purposes. If an association is endowed with a "complete legal personality" (288 U. S. at 479) and is "consistently regarded as a juridical person" (*Id.* at 481), there is "no adequate reason for holding that [it] has a different status for federal jurisdiction than a corporation" (*Id.* at 482). On the other hand, an association which, though suable as an entity, lacks other attributes of a juridical entity, must be deemed a citizen of each of the states in which it has members, because "what [is] but an association of individuals for so many ends and a juridical entity

for only a few, [is] not easily to be treated as if it were a single citizen" (*Id.* at 480).

C. The Import of *Puerto Rico* v. *Russell*.

The *Russell* opinion—with its emphasis on the "personality" of unincorporated associations—represents the final abandonment of the notion that the law recognizes only "natural persons." The Court referred to a corporation as a "person distinct from its members" (288 U. S. at 480) and to the sociedad as a "juridical person" (288 U. S. at 482), and concluded that precisely because they are "persons"—"with capacity to perform all legal acts" (288 U. S. 480)—it is "possible and convenient to treat [them] so for purposes of federal jurisdiction as well" *(Ibid.)*.

To the *Russell* court, it was sufficient that an association has a complete legal "personality" to warrant its treatment identically to natural persons for diversity purposes. Accordingly, the court did not deem it necessary to relate its conclusion to the purposes of the diversity jurisdiction.

It is clear, however, that *Russell* perfectly effectuates the purpose of the diversity jurisdiction. We have earlier described that purpose: to prevent prejudice to an outsider forced to litigate in the domicile of his adversary. A collective association may be subjected to just such prejudice, even though it has local members, if it has a "personality" so distinct from its members that their presence will not temper prejudice toward the association as an entity.

The law's assignation of legal personality to an association is a response to the fact that people who deal with the association recognize it as an entity. "The essential difference" in the legal treatment of corporations before and after the Industrial Revolution "was not a matter of technical legal construction, but *a way of looking at corporations.* Men's minds had become habituated to corporate activities . . ." *Neirbo Co.* v. *Bethlehem Corp.*, 308 U. S. 165, 169-70 (1939) (emphasis supplied). "The long, tortuous evolu-

tion of the methods whereby foreign corporations gained access to courts or could be brought there, is the history of judicial groping for a reconciliation between *the practical position achieved by the corporation in society* and a natural desire to confine the powers of these artificial creations." *Id.* at 169 (emphasis supplied).

The completeness of an association's "legal personality" is a reliable barometer of the extent to which the public views it as an entity distinct from its members. Accordingly it is a useful means for determining whether an association is likely to suffer local prejudice despite the presence of local members. The *Russell* test of citizenship—completeness of legal personality—thus is neatly designed to effectuate the purpose of the diversity jurisdiction.

D. The Cases Since *Puerto Rico* v. *Russell*.

This Court has not decided any case since *Russell* involving the attribution of citizenship to an unincorporated association. Four courts of appeals have read *Russell* as establishing the governing rule for determining the citizenship of unincorporated associations, and as impliedly overruling the *ipse dixit* of this Court's earlier cases. Under the holdings of these courts, an unincorporated association with a "complete legal personality" has, for diversity purposes, a citizenship distinct from its members. *Mason* v. *American Express Co.*, 334 F. 2d 392 (2d Cir. 1964); *American Federation of Musicians* v. *Stein*, 213 F. 2d 679 (6th Cir.) *cert. denied* 348 U. S. 873 (1954); *Swan* v. *First Church of Christ*, 225 F. 2d 745 (9th Cir. 1955); *Van Sant* v. *American Express Co.*, 169 F. 2d 355 (3d Cir. 1947).

The reasoning of these courts is exemplified by the following excerpts from the Second Circuit's decision in *Mason*, rendered a month before the decision below:

> "It is our considered judgment . . . that the Supreme Court has abandoned the artificial and mechanical rule of Chapman v. Barney in favor of a more flexible test

for capacity for citizenship, a test which demands that consideration be given to whether an organization's essential characteristics sufficiently invest it, like a corporation, with a complete legal personality distinct from that of the members it represents . . .

* * *

"[O]ur refusal to regard Chapman v. Barney as controlling law today stems primarily from our belief that the Supreme Court, some forty years after Chapman v. Barney, decided to depart from it . . .

* * *

"In 1933 the Supreme Court in Puerto Rico v. Russell & Co., supra, decided to treat a Puerto Rican business organization as a citizen for jurisdictional purposes despite the fact that it was not a corporation; and although the break with the past there achieved was not as clean as it might otherwise have been, since the court cited Chapman v. Barney without explicitly overruling it, we are nevertheless satisfied that the break was a clear one . . .

* * *

"This systematic appraisal of an organization's essential features under the law of its creation, in order to determine whether these features entitled it to the same treatment as a separate juridical person for diversity purposes as that accorded a corporation, must be regarded as representing a clear departure from Chapman v. Barney's basic assumption that only corporations were entitled to treatment as separate citizens for diversity purposes, and a departure from that case's consequent mechanical determination of the issue of capacity for citizenship on the basis of whether a state had or had not pinned on an organization the corporate label." (334 F. 2d at 393, 395, 396, 396-97).

Commentators, too, have viewed *Russell* as modifying the prior treatment of unincorporated associations for diversity purposes. Comment, *Unions as Juridical Persons,* 66 Yale L.J. 712, 742-49 (1957); 3 Moore, Federal Practice § 17.25, pp. 1413-14 (1963); Note, 33 Colum. L. Rev. 540, 541 (1933).

Indeed, two recent commentaries noting the conflict between the decision below and the Second Circuit's *Mason* decision, have concluded that *Mason*—and not the decision below—reflects the correct interpretation of *Russell,* and represents the proper effectuation of the purposes of diversity jurisdiction. Note, 65 Colum. L. Rev. 162 (1965); Comment, 50 Va. L. Rev. 1135 (1964).

We have found three court of appeals decisions citing *Russell* which nonetheless refused to confer citizenship on the particular associations before them. The only one involving a labor union was an early *per curiam* decision of the Second Circuit,[9] and it is of questionable vitality in light of that court's recent *Mason* decision. Another involved precisely the same type of association as was involved in *Chapman* v. *Barney, supra,* and the court refused to depart from *Chapman* because *Russell* did not expressly overrule *Chapman.*[10] In the third case, the court recognized that *Russell* provides "a basis in the law for extending the rule that a corporation is a citizen of the state of its formation to organizations having corporate characteristics," but nonetheless refused to apply *Russell* to an unincorporated reciprocal insurance exchange.[11] None of these cases suggests any meaningful reason why an unincorporated association having a complete legal personality should be treated differently from a corporation for diversity purposes.

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[9] *Rosendale* v. *Phillips,* 87 F. 2d 454 (2d Cir. 1937).

[10] *Brocki* v. *American Express Co.,* 279 F. 2d 785 (6th Cir.) cert. denied, 364 U. S. 871 (1960).

[11] *Arbuthnot* v. *State Automobile Ins. Assn.,* 264 F. 2d 260, 262 (10th Cir. 1959).

E. The Grounds Advanced by the Court Below for Not Following *Puerto Rico* v. *Russell* Are Untenable.

The Court below advanced two reasons for not following *Russell* in this case: (1) that *Russell* involved the determination of federal jurisdiction under the Organic Act of Puerto Rico, and is inapplicable to the diversity statute; and (2) that, alternatively, if *Russell was* applicable to the diversity statute, it was "reversed" by the 1958 amendments to that statute. As we shall show, the reasoning of the court below on each of these points is untenable.

1. The Decision in Puerto Rico v. Russell Is Applicable to the Determination of Citizenship Under the Diversity Statute, as well as the Organic Act of Puerto Rico.

The court below dismissed *Russell* as irrelevant, because *Russell* involved the determination of federal jurisdiction under the Organic Act of Puerto Rico (now 48 U. S. C. §§ 863, 864), not the diversity statute.[12] Considering itself bound by this Court's earlier decisions in *Chapman* v. *Barney*, 129 U. S. 677 (1889) and *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U. S. 449 (1900), the court below found nothing in the *Russell* opinion to indicate that this Court "was consciously expanding federal diversity jurisdiction."

This anaylsis will not survive a reading of the *Russell*

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[12] *Russell* was a suit by the Puerto Rican government to collect assessments on land held by an unincorporated *Sociedad in Comandita*, none of whose members were citizens of Puerto Rico. The sociedad removed the case to federal district court in San Juan, pursuant to Sections 41 and 42 of the Organic Act, now 48 U.S.C. §§ 863, 864, which confer removal jurisdiction on that court not only over "all cases cognizable in the district courts of the United States" but also over "all controversies where all of the parties on either side of the controversy are . . . citizens of a State, Territory, or District of the United States not domiciled in Puerto Rico." The sociedad argued that it fell within the latter provision because, as an unincorporated association, the citizenship of its members controlled and none of them were citizens of Puerto Rico. The Court held, however, that the sociedad was itself a citizen of Puerto Rico.

opinion. While, to be sure, the precise issue in *Russell* was whether the sociedad had a citizenship for the purpose of federal jurisdiction under the Organic Act, rather than the diversity statute, the sociedad, the lower court, and this Court all treated the questions as indistinguishable. Thus, the First Circuit had held the sociedad not to be a citizen, explaining that "where the jurisdiction of a federal court over a suit brought against a partnership depends upon *diversity of citizenship*, the question is to be determined by the citizenship of its members." The First Circuit cited *Chapman* and *Great Southern Fireproof* "in support of the conclusion reached." *People of Puerto Rico* v. *Havemeyer*, 60 F. 2d 10, 12-13 (1932). The sociedad, in its brief to this Court urging affirmance (77 L. Ed 905), relied upon *Chapman* and *Great Southern Fireproof*. And this Court, reversing, couched its entire opinion as an analysis of the diversity precedents. Noting that corporations have been treated as citizens for *diversity* purposes because of their complete legal personalities (288 U. S. at 479-80), and that the sociedad likewise had a complete legal personality (*Id.* at 481-82), the Court saw "no adequate reason for holding that the sociedad has a different status for purposes of federal jurisdiction than a corporation" (*Id.* at 482). *Chapman* and *Great Southern Fireproof* were distinguished *not* because they were diversity cases, but because the particular associations involved in those cases had had legal personalities "too incomplete" (*Id.* at 480).

Moreover, in a subsequent decision, this Court characterized *Russell* as involving the issue of "diversity of citizenship on which jurisdiction of the federal courts depended." *Puerto Rico* v. *Russell & Co.*, 315 U. S. 610, 614 (1942). Accordingly, the rule of *Russell* cannot be distinguished, as the court below attempted, on the ground that it is inapplicable to the determination of diversity of citizenship.

2. Puerto Rico v. Russell Was Not Reversed By the 1958 Amendments to the Diversity Statute.

The alternative holding of the court below was that "whatever basis there once was for the belief that *Russell* intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute." (R. 18). This conclusion is a complete *non-sequitur.*

The portion of the 1958 amendment which the court below found so portentous was the addition of 28 U. S. C. § 1332(c), which provides:

> "(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

The amendment was adopted to cure an anomaly in the treatment of corporations for diversity purposes. Prior to 1958, this Court had located the citizenship of corporations in the state of their incorporation. The result was that corporations were not considered citizens of their principal place of business though quite obviously that was the state where they were least likely to suffer local prejudice. Accordingly, 28 U. S. C. § 1332(c) was adopted to make corporations citizens of the State of their principal place of business. "The declared primary purpose of the amendment was to prevent local institutions from gaining admittance to federal courts in suits with local citizens by the device of incorporating in some other state. . . . Also important was the reduction of the federal court caseload thereby achieved." *Mason* v. *American Express Co.*, 334 F. 2d 392, 394, n. 2 (2d Cir. 1964).

The court below reasoned that, because the statute now expressly refers to corporations, but to no other associations,

Congress has expressed a judgment that no other associations may be citizens. The trouble with this reasoning is that it has no foundation in the legislative history. Congress did not, in 1958, make any judgments about who should be included, or excluded, from the term "citizen." It simply acted to correct a specific anomaly which had been brought to its attention regarding the *location* of the citizenship of corporations. Neither legislative report indicates that Congress gave any thought at all to the status of unincorporated associations. See H. Rep. No. 1706, 85th Cong. 2d Sess. (1958); S. Rep. No. 1830, 85th Cong. 2d Sess. (1958). Plainly, Congress did not "reverse" the *Russell* decision by the 1958 amendment, when it gave not a moment's consideration either to *Russell* or to the status of unincorporated associations.

The court below is alone in finding a legislative "reversal" of *Russell*. The Second Circuit, in *Mason, supra,* though demonstrating its awareness of the 1958 amendment, concluded that *Russell* continues to state the controlling principles governing the citizenship of unincorporated associations. And both the commentaries on the decision below found its reasoning on this point untenable. E.g. Comment, 50 Va. L. Rev. 1135, 1136, n. 16. (1964):

> "The court's reasoning is not persuasive. The amendment was intended merely to prevent essentially local corporations from invoking diversity jurisdiction by virtue of foreign incorporation. The problems of unincorporated associations were not considered."

See also Note, 65 Colum. L. Rev. 162, 166 (1965).

III. THE MODERN-DAY LABOR UNION HAS A COMPLETE LEGAL PERSONALITY.

We have shown that an unincorporated association should be treated as a citizen, for diversity purposes, if it has a complete legal personality. We now show that the labor union today has a complete legal personality.

Historically, labor unions have not always been treated as legal persons. At early common law they were viewed, like partnerships and social clubs, as loose groups of members, having no unique juridical personality.[13] Thus the Supreme Court of North Carolina in 1923 described the legal status of a labor union as an "airy nothing," *Tucker* v. *Eatough,* 186 N. C. 505, 507, 120 S. E. 57, 59 (1923), a remark which recalls strikingly Chief Justice Marshall's early characterization of the corporation in *Deveaux* as an "invisible, intangible and artificial being." (9 U. S. at 86)

But the labor union has undergone in the first half of the twentieth century a transformation in the eyes of the law quite as impressive as that of the corporation in the first half of the nineteenth century. By statute, and by judicial reformation of the common law, the union has emerged with a legal personality as complete as the corporation's and far more complete than the sociedad's in *Russell.*

The Sixth Circuit has found the characteristics of labor unions "much more impressive" than those of the sociedad in *Russell* "to compel recognition of unincorporated unions as juridical persons equivalent to corporations for purposes of citizenship in cases in which jurisdiction is founded upon diversity of citizenship." *American Federation of Musicians* v. *Stein,* 213 F. 2d 679, 687 (6th Cir.) *cert. denied* 348 U. S. 873 (1954). Likewise the district court in the present case found (and the Court of Appeals did not disturb its finding) that the Union "is a juridical person as fully and completely as if it were organized as a corporation, having

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[13] But see: Sir R. Reid [interrupting]: The trade unions are not corporations.

Prime Minister Balfour: I know; I am talking English, not law.
(House of Commons, 1904)

Quoted in Maitland, *Moral Personality and Legal Personality,* in Selected Essays 224 n. 1 (1936), and in Comment, 66 Yale L.J. 712 (1957).

as great unity of action and as much power centered in the governing officers" (R. 7, 13).

This Court has twice had occasion to comment upon the emerging legal personality of the labor union. As early as 1922, in holding labor unions suable as entities in the federal courts, this Court noted that with the "growth of . . . great labor organizations" had come "affirmative legal recognition of their existence." *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 385-86 (1922):

> "[I]n every way the union acts as a business entity, distinct from its members. No organized corporation has greater unity of action, and in none is more power centered in the governing executive bodies.
>
> "Undoubtedly, at common law, an unincorporated association of persons was not recognized as having any other character than a partnership in whatever was done . . . *But the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and provisions for their protection. . . .*" (Emphasis supplied).

And in 1944, holding that a labor union, like a corporation, could not resist a subpoena by invoking the Fourth and Fifth Amendments, this Court specified the respects in which a labor union "is an institution which involves more than the private or personal interests of its members." *United States* v. *White*, 322 U. S. 694, 701-03:

> "Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized, institutional activity as contrasted with wholly individual activity . . . The union's existence in fact, and for some purposes in law, is as perpetual as that of any corporation, not being dependent upon the life of any member. It normally operates under its own constitution, rules and by-laws which, in controversies between

member and union, are often enforced by the courts. The union engages in a multitude of business and other official concerted activities, none of which can be said to be the private undertakings of the members. Duly elected union officers have no authority to do or sanction anything other than that which the union may lawfully do; nor have they authority to act for the members in matters affecting only the individual rights of such members. The union owns separate real and personal property, even though the title may nominally be in the names of its members or trustees. The official union books and records are distinct from the personal books and records of the individuals, in the same manner as the union treasury exists apart from the private and personal funds of the members . . . The actions of one individual member no more bind the union than they bind another individual member unless there is proof that the union authorized or ratified the acts in question. At the same time, the members are not subject to either criminal or civil liability for the acts of the union or its officers as such unless it is shown that they personally authorized or participated in the particular act . . .

"Moreover, this Court in [*Coronado*] held that labor unions might be made parties defendant . . . by service of process on their officers.

"Both common law rules and legislative enactments have granted many substantive rights to labor unions as separate functioning institutions . . . Even greater substantive rights have been granted labor unions by federal and state legislation subsequent to the statutes enumerated in the opinion in [*Coronado*]." [14]

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[14] To the same effect, see *International Association of Machinists* v. *Gonzales*, 356 U. S. 617, 619 (1958):

"Though an unincorporated association, a labor union is for

This Court's analysis was in 1944. Since that time, labor unions have steadily acquired still further attributes of legal personality. In 1947 Congress enacted the Labor-Management Relations Act (Taft-Hartley), and imposed upon labor organizations, as entities, a host of rights and duties. For example, the Act expressly recognizes the labor union's power to contract and makes its contracts enforceable, Section 301(a), 29 U. S. C. § 185(a), and imposes duties under the unfair labor practice provisions which are the duties of the union as an entity, and not of its members, § 8(b), 29 U. S. C. § 158(b). The National Labor Relations Board viewed Taft-Hartley as signaling the death-knell of "the common law concept" of the labor union:

> "The Common Law concept of an unincorporated labor organization as a group of individuals having no separate entity apart from its members has been discarded—to the extent that it was not already outmoded in modern jurisprudence—by the Labor Management Relations Act, 1947. It is clear that the Act treats labor organizations, for all practical purposes, as juridical entities." *International Longshoremen's Union*, 79 N. L. R. B. 1487, 1508 n. 40 (1948).

Whatever conceivable doubt there might previously have been as to the completeness of the labor union's legal personality surely was removed with the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. §§ 401 et. seq. Even prior to 1959, Congress had provided union members freedom from liability com-

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many purposes given the rights and subjected to the obligations of a legal entity. [Citing *Coronado Coal* and *White*]."

See also, *International Association of Machinists* v. *Street*, 367 U. S. 740, 808 (1961) (dissenting opinion of Mr. Justice Frankfurter):

> "Responsive to the actualities of our industrial society, in which unions as such play the role that they do, the law regards a union as a self-contained, legal personality exercising rights and subject to responsibilities wholly distinct from its individual members."

parable to that of corporate shareholders under State law. Section 301(b), Labor-Management Relations Act, 29 U. S. C. § 185(b).[15] But in 1959, through the LMRDA, Congress filled out the labor union's legal personality so that it is virtually indistinguishable from the corporation's in every respect. Thus, the LMRDA requires every union to "adopt a constitution and bylaws" and to file them as public records with the Secretary of Labor, 29 U. S. C. §§ 431(a), 435(a), just as corporations are required by State law to adopt and file by-laws. And it regulates virtually every aspect of the union's relationship with its members, in much the same way as State laws regulate the relationship of a corporation with its shareholders.[16] The basic premise justifying such regulation is Congress' judgment that a union is not simply a group of individuals, but rather a complex institution with an existence so distinct from its members as to require comprehensive statutory regulation of the union-member relationship. "Trade unions have grown well beyond their beginnings as relatively small, closely knit associations of workingmen where personal, fraternal relationships were characteristic. Like other

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[15] Section 301(b) provides that: "Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

[16] E.g., the LMRDA contains a "bill of rights" which members may enforce against the union by private legal action (29 U.S.C. §§ 411-15); it requires unions to file public reports concerning their organizational structure and finances (29 U.S.C. § 431); it requires their officers to report any financial relationships which might involve them in conflicts of interest (29 U.S.C. § 432); it regulates the relationship between national and local unions (29 U.S.C. §§ 461-64); it provides a comprehensive code governing the election of union officers (29 U.S.C. §§ 481-83); it creates statutory standards of fiduciary responsibility for union officers (29 U.S.C. § 501) and requires that they be bonded (29 U.S.C. § 502); it forbids certain types of loan transactions between unions and their officers or employees (29 U.S.C. § 503); and it creates certain statutory qualifications for union office (29 U.S.C. § 504).

American institutions some unions have become large and impersonal; they have acquired bureaucratic tendencies and characteristics . . ." S. Rep. No. 187, 86th Cong. 1st Sess. 6 (1959).

On the basis of its ever-increasing legal characteristics, the Supreme Court of California, in 1962, concluded that the modern labor union is "more akin to the corporation than the partnership or the social or fraternal order." *Marshall* v. *International Longshoremen's Union,* 57 Cal. 2d 781, 371 P. 2d 987 (1962):

> "The labor union is a developing institution and with its tremendous growth in importance and power has come to be more akin to the corporation than the partnership or the social or fraternal order . . . It is obvious that such organizations are no longer comparable to voluntary fraternal orders or partnerships; that they are *sui generis,* and approximate corporations in their methods of operation and powers . . . To consider such organizations under present day conditions as mere social or fraternal orders or partnerships is to close one's eyes to the realities now existing."

Thus far we have looked to those characteristics of the labor union which give it a personality like the corporation's. But in two respects, the labor union has a life distinct from its members which far exceeds that of the corporation. First, the labor union may have involuntary members. Under "union shop" contracts, dissenting employees may be required to join the union in order to retain their jobs. Second, the labor union is required by law to represent members and non-members alike. National Labor Relations Act, § 9(a), 29 U. S. C. § 159(a), *Steele* v. *Louisville & Nashville R. R. Co.,* 323 U. S. 192 (1944). What better evidence that the labor union has a personality distinct from its members than that it may have members who would prefer not to belong, and that it must represent persons who do not belong?

In short, the labor union of today has a "complete legal personality," and accordingly has a citizenship of its own for diversity purposes, distinct from the citizenships of its members.

IV. A LABOR UNION'S CITIZENSHIP IS IN THE STATE OF ITS PRINCIPAL PLACE OF BUSINESS.

We have shown that the modern-day labor union has a citizenship of its own for diversity purposes, distinct from the citizenships of its individual members. The question remains, of what state is the labor union a citizen?

Since the purpose of the diversity grant is to prevent prejudice to foreigners, a labor union should be regarded as a citizen of the state in which it is least likely to suffer such prejudice. In our view, that would be the state which is its principal place of business.

This is the test which Congress adopted for corporations in 28 U. S. C. § 1332(c). And it appears to have been the real basis for the early decisions of this Court, holding that corporations are to be regarded as citizens of their state of incorporation.

At the time this Court first held a corporation to be a citizen, corporations invariably incorporated in their principal place of business. Accordingly, though the Court used "State of incorporation" as a convenient formula to define a corporation's citizenship, this definition effectively made corporations citizens of their principal place of business as well. That the Court considered the latter factor at least equally important in determining citizenship is evident from its early decisions. Thus, in *Louisville, C. & C. R. R. Co.* v. *Letson,* 43 U. S. (2 How.) 495, 554 (1844) the Court stated:

> "A suit, then, brought by a citizen of one State against a corporation by its corporate name *in the State of its locality, by which it was created and where its business is done by any of the corporators who are chosen to*

> *manage its affairs,* is a suit, so far as jurisdiction is concerned, between citizens of the State where the suit is brought and a citizen of another State." (Emphasis supplied.)

And in *Marshall* v. *The Baltimore and Ohio Railroad Co.*, 57 U. S. (16 How.) 314, 326, 327 (1853), the Court emphasized that it was essential that corporations be deemed citizens of the state of their incorporation, to assure that an out-of-state plaintiff would not be left to the mercy of the State courts of "the State in which the defendant *resides,*" and of which the corporation's "trustees and representatives . . . are usually citizens."

Thereafter, the practice developed of incorporating in States other than the principal place of business. We have found no case, however, in which the Court was asked to amend its definition of corporate citizenship to accommodate to this change. However, in 1958, Congress amended the diversity statute to make corporations citizens of their principal place of business, expressing its view that the diversity statute had *always* been intended to reach that result. H. Rep. No. 1706, 85th Cong. 2d Sess. 4 (1958):

> "The underlying purpose of diversity of citizenship legislation (which incidentally goes back to the beginning of the Federal judicial system, having been established by the Judiciary Act of 1789) is to provide a separate forum for out-of-State citizens against the prejudices of local courts and local juries by making available to them the benefits and safeguards of the Federal courts. *Whatever the effectiveness of this rule, it was never intended to extend to local corporations, which, because of a legal fiction, are considered citizens of another State.* It is a matter of common knowledge that such incorporations are primarily initiated to obtain some advantage taxwise in the State of incorpora-

> tion or to obtain the benefits of the more liberal provisions of the foreign State's corporation laws. Such incorporations are not intended for the prime purpose of doing business in the foreign State. It appears neither fair nor proper for such corporations to avoid trial in the State where it has its principal place of business by resorting to a legal device not available to the individual citizen." (Emphasis supplied)

Those courts and commentators concluding that labor unions are citizens for diversity purposes have uniformly located that citizenship in the State of the union's principal place of business. *American Federation of Musicians* v. *Stein,* 213 F. 2d 679, 686 (6th Cir.) *cert. denied,* 348 U. S. 873 (1954); *Ex parte Edelstein,* 30 F. 2d 636, 640 (2d Cir.) (dissenting opinion), *cert. denied,* 279 U. S. 851 (1929); Comment, *Unions as Juridical Persons,* 66 Yale L. J. 712, 749 (1957); 3 Moore, Federal Practice, ¶ 17.25, pp. 1415-16 (2d Ed. 1963). See also, American Law Institute, *Study of the Division of Jurisdiction between State and Federal Courts,* Tent. Draft No. 2, § 1301 (b) (2) (1964).

The principal place of business of the union involved in this case—United Steelworkers of America—is Pennsylvania. The union so alleged in its removal petition (R. 4, 5); the Company did not dispute the allegation in its motion to remand (R. 6); the district court found it as a fact (R. 7); and the court of appeals repeated that finding and did not disturb it (R. 13). Indeed, it is common knowledge that—whether measured by number of members, number of employees, location of headquarters, or any other standard—Pennsylvania is the Steelworkers' principal place of business.

CONCLUSION

The Company is a citizen of North Carolina, and the Union is a citizen of Pennsylvania. Accordingly, there is diversity of citizenship, and the decision of the court below should be reversed.

Respectfully submitted,

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APPENDIX

Examples of Regional Prejudice Encountered by Labor Unions Attempting to Organize in Unfriendly Sections of the Country.

The best evidence that regional prejudice against labor unions exists is that those resisting union organization in unfriendly areas constantly appeal to such prejudice. At a House Subcommittee hearing in 1961, the Textile Workers' Union introduced some of the propaganda which it encountered while trying to organize in hostile areas. We have set out in this appendix certain of these materials. The materials included span five separate communities in which the union sought to organize. They are taken from Hearings, Administration of the Labor Management Relations Act by the NLRB, before the Subcommittee on National Labor Relations Board, 87th Cong. 1st Sess. (1961), Part I, at pp. 292, 319, 300, 301, 302, 303, 304, 305, 306, 307, 308, 315, 331.

The Black Plague of Unionism Hits the Southern Worker, Too!

Hearts of union organizers and their Northern bosses bleed for you only while they paint the "dismal" picture of your present circumstances and promise the glowing mirage of paradise if you'll just pay them dues, assessments, fines, etc.

Recently the California Cotton Mill, Uniontown, Ala., closed and was liquidated because it couldn't live under union demands. How the TWUA promises come true is best told in the following, written by a Uniontown minister who himself formerly worked in a cotton mill:

"I know that it was the CIO that caused all the trouble in Uniontown, and I know that it was because of the CIO that there is so much suffering in Uniontown now. The CIO caused the California Cotton Mill there to have to close down.

"Today the people who once worked in that mill are without work, except for the little extra jobs they can pick up here and there in and around Uniontown. They and their children are hungry and unhappy. They don't know what is going to happen to them.

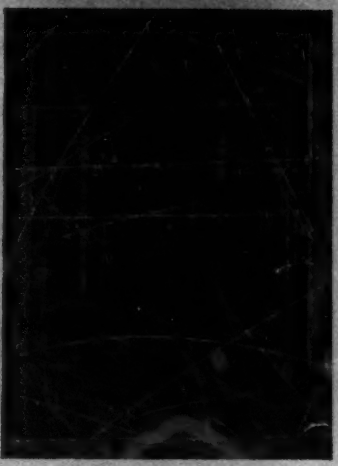
"I went to see one of the officers of the CIO local in Uniontown. I asked him why it was that his union didn't do something to help these poor people. I knew they had been paying union dues for a long time. This is what he told me.

"He said that when the California Cotton Mill shut down, the local CIO had about $6,000 in its treasury. But the national CIO froze this money, and wouldn't let the local have one dime of the money to spend, and that the national CIO hadn't done one thing to help feed the former union members in Uniontown, except a little help they did give at first to a favored few.

"When I first went to Uniontown, nearly every mill family owned an automobile. Today there are not more than four families that still have their cars. The people have had to give up so much of their household furnishings and appliances. Many of the children are not in school, for their parents can't buy them clothing to wear.

"Let me tell you one thing. I have been around a good bit in my time. And I have never seen a union take over in a mill that a strike didn't follow, sooner or later. And I have never seen a strike that did not cause hard feelings, a lot of trouble and a lot of suffering.

"Let me beg of you, good people, not to take the risk of letting the CIO come in here. If you do, I believe with all my heart that the time will come when you will regret it."



TODAY the mills pictured on these pages are silent testimonials to the union's betrayal of the thousands of employees now out of jobs. Only too late did these folks learn that the union always fulfills just one promise—to provide strikes.

Our Sister Community Of Darlington

JUST ACROSS THE STATE LINE IN SOUTH CAROLINA IS HAVING ITS

Biggest Industry Sold This Week

BECAUSE THE WORKERS IN THE PLANT RECENTLY

Voted For Union Representation

WE ARE HAPPY THAT THIS DID NOT HAPPEN IN LUMBERTON

Many of us remember the trying times we went thru just a little more than a year ago when Caledonia sold their Lumberton mill due to bad labor relations. During the first twelve months in which the new company has operated this mill, an average of 375 employees have been paid $747,502.36 in wages. In addition, the management of the new company has spent $2,250.00 in the purchase of materials and supplies with the merchants in our city.

THIS WEEK A GROUP OF LUMBERTON CITIZENS BANDED TOGETHER TO

Insure That Both Labor And Management

IN EVERY ONE OF OUR

Local Industries Has A Square–Fair Deal

We do not want any group of outsiders to come into our community to stir up trouble in our industries. Present labor relations in Lumberton's industries are excellent, and we expect to keep it that way.

LUMBERTON

INDUSTRIAL RELATIONS COUNCIL

"WORKING FOR LABOR AND MANAGEMENT"

[illegible], CHAIRMAN — JOHN LUTHER McLEAN, VICE CHAIRMAN — [illegible], TREASURER

EXECUTIVE COMMITTEE: JOHN BATEMAN, E. G. FISHER, J. C. JACKSON

JEFFERSON MILLS

NYLON PROCESSORS

PULASKI · VIRGINIA

April 28, 1958

TO THE EMPLOYEES OF JEFFERSON MILLS:

We believe it is our duty to bring to your attention the IWUA position on the subject of integration. This is a matter of immense concern to each and everyone of us. The attached brochure in our opinion very fairly and clearly presents the Union position.

We were not surprised to read in the November 8, 1957 issue of U. S. News and World Report that Walter Reuther, second in command of the AFL-CIO, was on the Board of Directors of the National Association for the Advancement of Colored People, better known as the NCAAP. Walter Reuther, as a member of that Board, is one of the persons that has spearheaded the NCAAP's drive for desegregation.

What should be of immense concern, whether you work at our plant or whether someone in your family works at our plant, is the Union's position on the hiring and working of colored persons. The Union supports legislation that would require in effect that white and colored be hired and work on an equal basis. Where the Union has been successful in [illegible]ping the passage of such legislation one finds colored men working next to white women and colored women working next to white women. This is a condition that the IWUA seeks to impose on the people in Virginia and, of course, would seek to impose on us here at Jefferson.

We repeat, we feel it is our duty to bring these facts to your attention. You certainly should know the Union's stand on this vital issue. You should know that a vote for the IWUA is a vote for desegregation.

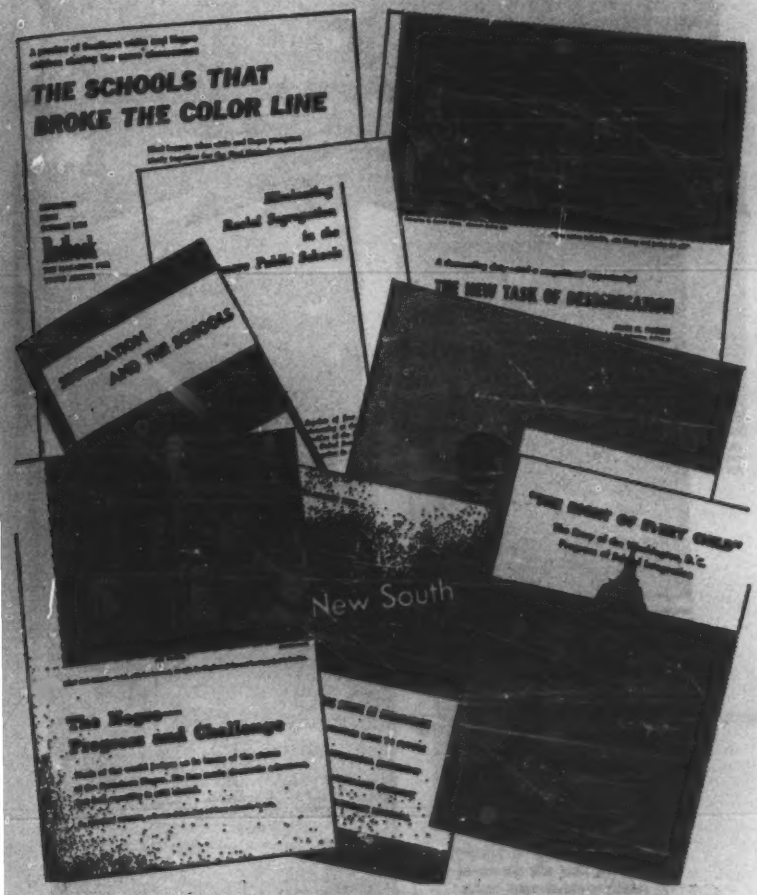
THE TWUA WILL 'BENEFIT' YOU BY DESTROYING ALL SEGREGATION IN THE SOUTH

Here's What Happened to $75,000 of Union Dues!

Donation for $75,000 is given the National Association for the Advancement of Colored People (NAACP) by CIO former president, Walter P. Reuther. The donation is shown being accepted by NAACP President Arthur Spingarn and Roy Wilkins, NAACP Administrator.

Your $36 A Year Dues, Plus Special Assessments, will Provide Even More Money for the NAACP

Dues of Union Members Paid for These and Many Other Booklets, All Distributed by the CIO, AFL Department of Education and Research, Washington, D. C.



Do You Want Your Money Spent This Way?

There is now no segregation in the use of CIO facilities, such as meeting halls, restrooms, drinking fountains, etc. Where the CIO and its unions have its way, there is likewise no segregation in the use of plant eating places, locker rooms, restrooms, etc.

EXCERPT FROM BRIEF FOR THE CIO IN THE UNITED STATES SUPREME COURT

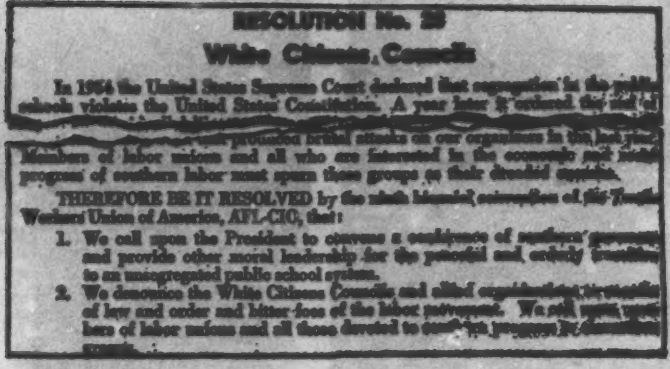
"The meetings of the CIO and its affiliates are never segregated."

EXCERPT FROM BRIEF FOR THE CIO IN THE UNITED STATES SUPREME COURT

"The CIO supports the elimination of racial segregation from every phase of American life"... "forthwith rather than by gradual adjustment."

EXCERPT FROM BRIEF FOR THE CIO IN THE UNITED STATES SUPREME COURT

The Northern TWUA Bosses are forcing this nasty integration dose down the throats of Southern Union Workers!



RESOLUTION No. 28

White Citizens Councils

In 1954 the United States Supreme Court declared that segregation in the public schools violates the United States Constitution. A year later it ordered that such [illegible]

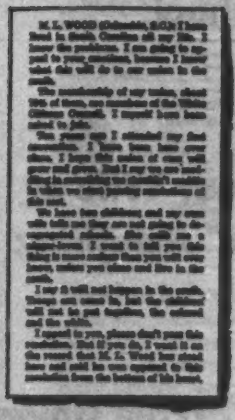
[illegible] provoked brutal attacks on our organizers in this last year. Members of labor unions and all who are interested in the economic and social progress of southern labor must spurn these groups as their deadly enemies.

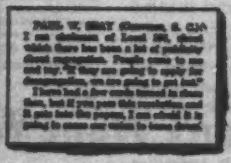
THEREFORE BE IT RESOLVED by the ninth biennial convention of the Textile Workers Union of America, AFL-CIO, that:

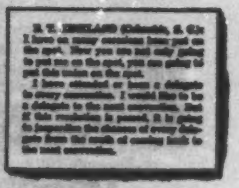
1. We call upon the President to convene a conference of southern governors and provide other moral leadership for the peaceful and orderly transition to an unsegregated public school system.
2. We denounce the White Citizens Councils and allied organizations [illegible] of law and order and bitter foes of the labor movement. We call upon true leaders of labor unions and all those devoted to [illegible]

Here's the infamous Resolution No. 28, passed by a vote of more than two to one at the convention of the TWUA, AFL-CIO, at Washington, D. C., in May, 1956. It is reproduced from the Union's own publication, "TEXTILE LABOR", Vol. XVII, No. 6 June, 1956.

And here's what Southern Union Members think of it!

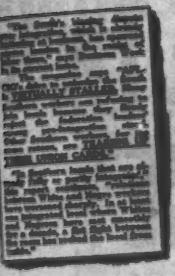


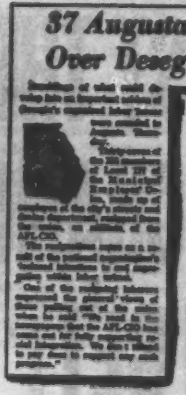


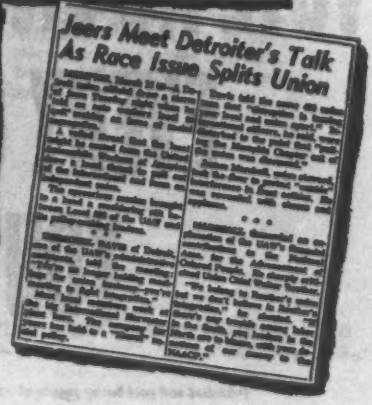


These are reproduced, without change, from "TEXTILE LABOR", Vol. XVII, No. 6, Page 24, June, 1956.

So These Southerners Did Something About It--They Tore Up Their Union Cards!







IF You Don't Want Your Children in an Integrated School;

IF You Don't Want Your Wife or Daughter in "Mixed" Meetings;

IF You Don't Want the Textile Union's New York Bosses to Integrate YOU;

VOTE AGAINST THE TWUA EVERY CHANCE YOU GET!

Published and paid for by people who desire to preserve the Southern Way of Life

The Anniston Star

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Another Labor Disaster

It is with profound regret that we noticed in the Sunday edition of this paper that the employes of the Linen Thread Company have petitioned the National Labor Relations Board for a union election to be held on August 24. It is to be hoped, however, that reconsideration will take place before that date.

If there is an impartial person who might have influence with the Union in this particular, it is hoped that intercession will be made so between the two parties to become involved in the proposed election before further damage has been done to amicable relations.

The Linen Thread Company is one of the largest textile operations in the South. And in view of good labor relations there in the past, the present directors of the company have moved their plants at three places in the North down here, thereby concentrating all their operations at one place.

Unfortunately, however, the company has not been able to hit top production on account of a few disgruntled operatives who have made trouble time after time in the last few months.

[illegible] has happened. The slowdown in business generally all over the country, as indicated in the price declines on the stock market in scores of commodities, including textiles. The man who has a secure job, therefore, is fortunate indeed.

Before they cause further distress at Linen Thread, it would be well for the troublemakers there to take a peep at the ghost-like appearance of the once prosperous Utica Mill. And even more enlightening as to what unfair demands can do, the abandoned Dwight Mill at Gadsden will furnish a distressing picture.

The Chamber of Commerce and the City of Anniston are doing all in their power to lessen the deplorable unemployment here in Anniston; and the members of the union in our sister city at Blue Mountain, it would seem, should be doing all in their power to keep the list of the idle from growing larger.

Unless we all join our efforts to keep every citizen of Anniston gainfully employed, the Chamber of Commerce might just as well close its doors, stop seeking new industry and thus allow this onetime Model City to become a mere ghost town for lack of cooperation on the part of its citizens.

And when we speak of Anniston, we of course have reference also to Blue Mountain, which is included in our metropolitan statistics. For anything that affects Linen Thread, one of our oldest industries, affects us as well; and hence it is that we make this plea to Linen Thread employes in behalf of all the people of our community.

ANNISTON, ALABAMA. NEWSPAPER SERVING LINEN THREAD WORKERS, BLUE MOUNTAIN, ALA.

THE SYLACAUGA NEWS
PUBLISHED EACH THURSDAY

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New Construction Days

There is quite a similarity between the South's present new-construction days and the Re-construction days that followed the Civil War.

At that time Northern industrial leaders as well as the big banking interests tried every possible means to throttle the South to the extent that it would remain a captive area thereby subservient economically and politically to their Northern masters. History records only too vividly the scarred years during which the South fought for its very existence, and every Southerner is familiar with this phase of history without further reminder.

We have no intention of re-kindling any flame that has long been extinguished, but we would call attention to a similarity between those days and now.

The South is today in a boom of new construction and it is being resented by Northern capital and Northern industry almost as much as in re-construction days. Today, however, they have a new ally in the huge labor unions who know they can never throttle nor subsidize Southern labor and are therefore lending their every effort, and sparing no expense, to keep industrial expansion out of the South.

The recent telephone strike was not nation-wide, but applied only in the South. The L. & N Railroad strike was not felt to any marked degree in any other section. Third both of these strikes were settled definitely not in favor of the strikers is not pertinent to the topic.

A strike-bound truck company in Gadsden moved out bag and baggage to the state of Georgia.

A textile company in Uniontown, closed down by a strike, sold its equipment, ceased all operations and made a ghost town of a thriving community.

The coal industry, once one of Alabama's largest, as a result of periodical disruption and extended strikes, is practically a thing of the past.

A few years ago Huntsville was the hub of textile manufacturing in the state, with nine good-sized textile mills. All went out for one reason or another until only three large ones were left. One of these then ceased operations and is now a warehouse, leaving only two mills. Last week one of these two,—strike-bound, and without hope of settlement, shut its gates and suspended operations indefinitely. The closing of each of these mills put thousands of men and women out of employment.

Should these actions be continued and instituted allowed to multiply, the South's future as an industrial area is doomed. Should they be stopped the South will go on to greatness unparalled.

Now, in all fairness, let us look at the over-all picture from the other angle. There are many closed-shop industries operating in the South. They are operating without discord and without friction and without strife. This proves there is plenty of room for the closed-shop industry right alongside the open-shop ones. That's the way it should be —competitive. Let the worker decide which shop he wants to work in. That is the spirit and the letter of the Right to Work law and that's why we have so staunchly supported this legislation.

Our primary interest in labor legislation has to do naturally, with local industry, the major such industry being Avondale Mills. As proven above, past experience shows that textile mills do not lend themselves to closed shop operation, and where such has been the result of forceful procedure, the mills have closed down. This is what we do not want to see happen in Sylacauga, but this is most certainly what would happen in Sylacauga.

For ten months now Avondale workers on their way to and from work have been continuously aggravated and annoyed by people unknown to them who are becoming more and more obnoxious in their overbearing insistence until a breaking point is about to be reached. We believe properly supervised law enforcement can and will prevent any untoward serious incident, but should this fail the employees will most certainly not be at fault.

It's well and good to turn the other cheek but sometimes it's the other fellow's cheek that needs to be turned.

Almost A Record

A bill introduced by Talladega County state senator Kyser Leonard almost established a record in being defeated 49 to 1. The bill sought to put a price limit on retail sales and bargain items and it had a very unpopular reaction.

The interpretation seemed to be that while it was well enough for the senator with his augmented $50,000 per day income plus expenses, there were still people living on small budgets who have to take advantage of every saving possible.

As far as the merchant is concerned he feels that such a bill is class legislation against him that would limit competitive efforts, and to the bill is unpopular from both sources.

However, that the bill would not become a law was never in doubt, but had Senator Leonard known just about when the committee voted he would have had the distinction of being the only lawmaker to have his own bill defeated 100 percent.